

REMARKS

This is a full and timely response to the non-final Official Action mailed **February 3, 2004** (Paper No. 2). Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

By the forgoing amendment, the specification has been amended to correct minor typographical errors. Additionally, new claims 23-29 have been added. No original claims have been amended or cancelled. Thus, claims 1-29 are currently pending for the Examiner's consideration.

With regard to the prior art, claims 1, 3-9 and 11-22 were rejected as unpatentable under 35 U.S.C. § 103(a) over the combined teachings of U.S. Patent Publication No. 2002/0104097 to Jerding et al. ("Jerding") and U.S. Patent Publication No. 2002/0116706 to Bahraini ("Bahraini"). Claims 2 and 10 were rejected as unpatentable over the combined teachings of Jerding, Bahraini and U.S. Patent No. 5,883,901 to Chiu et al. ("Chiu"). For at least the following reasons, these rejections are respectfully traversed.

Claim 1 recites:

A set-top unit for connection to a cable television system comprising:
a control channel tuner;
at least one programming tuner; and
a processor for controlling said tuners;
wherein said processor controls said at least one programming tuner to scan a
frequency band to locate a control channel.
(emphasis added).

In contrast, the cited prior art fails to teach or suggest a programming tuner, as opposed to a control channel tuner, that scans a frequency band to locate a control channel. The recent Office Action expressly concedes that "Jerding fails to show that the programming tuner scans frequencies to locate a control channel." (Paper No. 2, p. 2). Consequently, the Action makes reference to the teachings of Bahraini. However, Bahraini merely states that the set top box (STB) "may scan a range of frequencies for the OOB channel." (Para. 0009). Bahraini, like Jerding, does not teach or suggest that it is a programming tuner, separate from another control channel tuner, that is performing the scan of frequencies for a control channel.

"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). Consequently, the rejection based on Jerding and Bahraini of claims 1-8 should be reconsidered and withdrawn.

Additionally, Bahraini is a publication dated August 22, 2002 based on an application filed December 13, 2000. The application of December 13, 2000 claims priority from a provisional patent application, 60/170,548, filed December 14, 1999. Therefore, the only subject matter in Bahraini that can be used as prior art against the present application is subject matter which was included in the provisional patent application, 60/170,548. Consequently, Applicant requests that it be verified and demonstrated that the teachings of Bahraini on which the Office Action relies were present in the provision patent application, 60/170,548 of December 14, 1999.

Similar to claim 1, independent claim 9 recites:

A method for acquiring a control channel of a cable television system with a set-top unit connected to said cable television system, the method comprising controlling at least one programming tuner of said set-top unit to scan a frequency band to locate said control channel.

(emphasis added).

Independent claim 17 recites:

A set-top unit for connection to a cable television system comprising:
first tuning means for tuning a control channel;
second tuning means for tuning a frequency in a composite signal from said cable television system independently of said first tuning means; and
processing means for controlling said tuning means;
wherein said processing means controls said second tuning means to scan a frequency band to locate said control channel.

(emphasis added).

Independent claim 20 recites:

Computer-readable instructions stored in a medium for recording computer-readable instructions in a set-top unit for connection to a cable television system, the instructions causing a processor of said set-top unit to control at least one programming tuner of said set-top unit to scan a frequency band to locate said control channel.

(emphasis added).

As demonstrated above, the combination of Jerding and Bahraini fails to teach or suggest a programming tuner, or second tuning means, that scans a frequency band to locate a control channel. Therefore, the rejection of claims 9-22 based on Jerding and Bahraini should also be reconsidered and withdrawn.

Claim 3 recites:

The set-top unit of claim 1, wherein:
said processor controls said at least one programming tuner to tune frequencies in said frequency band and identify frequencies carrying an active signal; and

said processor controls said control channel tuner to tune said frequencies carrying an active signal to locate said control channel.

In contrast, the cited combination of prior art fails to teach or suggest that a first tuner, a programming tuner, identifies frequencies carrying an active signal, while a second tuner, a control channel tuner, re-tunes said frequencies to locate a control channel. The prior art fails to explain how or where the prior art teaches this coordinated search for a control channel employing two different tuners as claimed.

Claims 11, 18 and 21 recite similar subject matter. Consequently, for at least the additional reason that Jerding and Bahraini fail to teach or suggest the subject matter of claims 3, 11, 18 and 21, the rejection of claims 3-5, 11-13, 18 and 21 should be reconsidered and withdrawn.

Claim 6 recites:

The set-top unit of claim 1, wherein said processor divides said frequency band among said control channel tuner and said at least one programming tuner, and controls each said tuner to search a different portion of said frequency band for said control channel.

Claims 14, 19 and 22 recites similar subject matter.

The recent Office Action concedes that Jerding and Bahraini fail to teach or suggest dividing a frequency band between a control channel tuner and a programming tuner in the search for a control channel. However, the Action takes Official Notice that it is known to splitting up a task between plural components to facilitate processing speed. (Paper No. 2, p. 3).

Applicant respectfully submits that this is insufficient. The prior art does not teach or suggest dividing a frequency band among a control channel tuner and one or more programming tuners as claimed in a search for a control channel. Therefore, for at least this additional reason, the rejection of claims 6-8, 14-16, 19 and 22 should be reconsidered and withdrawn.

For the foregoing reasons, the present application is thought to be clearly in condition for allowance. Accordingly, favorable reconsideration of the application in light of these remarks is courteously solicited. If any fees are owed in connection with this paper which have not been elsewhere authorized, authorization is hereby given to charge those fees to Deposit Account 18-0013 in the name of Rader, Fishman & Grauer PLLC. If the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,



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